

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT HAYES,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 3:24-cv-05141-TLF

ORDER GRANTING PLAINTIFF'S
MOTION FOR EXTENSION OF
TIME; ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

This matter comes before the Court on defendant's motion to dismiss plaintiff's complaint requesting that this Court order the Office of Social Security Administration to acknowledge evidence received from plaintiff and provide plaintiff with a more detailed explanation as to why his supplemental security income application was denied. Dkt. 5. Plaintiff is proceeding in this matter without representation by an attorney. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. Dkt. 8.

Plaintiff filed a motion for extension of time (Dkt. 11) to respond to the motion to dismiss. Plaintiff also filed a document in response (Dkt. 12) to defendant's motion to dismiss, on the same date he filed the motion for extension of time. It appears that plaintiff filed a supplemental brief and requested additional time to do this. That motion (Dkt. 11) is granted; the Court GRANTS the motion for extension of time and accepts plaintiff's supplemental responding brief (Dkt. 13).

1 For the reasons set forth below, the Court GRANTS defendant's motion to
2 dismiss.

3 BACKGROUND

4 On June 27, 2023, plaintiff filed an application for supplemental security income
5 (SSI) benefits. Dkt. 5 at 2. On September 8, 2023 plaintiff's application was denied
6 based on a determination that he had undisclosed resources from multiple bank
7 accounts totaling \$303,443.89. *Id.* On September 21, 2023 plaintiff filed a request for
8 reconsideration. *Id.* He states that he included 43 bank statements and three years of
9 purchases from Amazon. *Id.* Plaintiff states that he met with a Social Security
10 representative and discussed the documents provided. *Id.* at 3.

11 On January 18, 2024 plaintiff's request for reconsideration was denied. *Id.* at 3.
12 On February 20, 2024, plaintiff filed an application to proceed in forma pauperis (IFP)
13 and a proposed complaint. Dkt. 1. On February 29, 2024, the Court granted plaintiff's
14 IFP application. Dkt. 4. In the complaint, plaintiff raises one issue: "[d]id the Social
15 Security Administration act in their non-discretionary function by considering an
16 incomplete file." Dkt. 5 at 4.

17 On April 29, 2024, the Commissioner of Social Security filed a motion to dismiss
18 based on failure to state a claim, under Federal Rule of Civil Procedure 12(b)(6). The
19 Commissioner contends plaintiff is required to exhaust administrative remedies before
20 filing this action in United States District Court; plaintiff currently has a request for a
21 hearing pending before the Social Security Administration (SSA) and therefore he does
22 not have a judicially reviewable final decision. Dkt. 9.

1 The Commissioner also argues that the Court does not have jurisdiction to
2 consider plaintiff's mandamus claim. *Id.* at 5-6.

3 DISCUSSION

4 The Court's review of a motion to dismiss under Federal Rule of Civil Procedure
5 (Fed. R. Civ. P.) 12(b)(6) is limited to the complaint and documents incorporated into
6 the complaint by reference. *Khoja v. Orexigen Therapeutics Inc.*, 899 F.3d 988, 998 (9th
7 Cir. 2018); *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). A motion to
8 dismiss may be granted only if plaintiff's complaint, with all factual allegations accepted
9 as true, fails to "raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
10 *Twombly*, 550 U.S. 544, 545 (2007).

11 To survive a motion to dismiss, a complaint must contain sufficient factual
12 matter, accepted as true, to "state a claim to relief that is plausible on its
13 face." A claim has facial plausibility when the plaintiff pleads factual
14 content that allows the court to draw the reasonable inference that the
defendant is liable for the misconduct alleged. The plausibility standard is
not akin to a probability requirement, but it asks for more than a sheer
possibility that a defendant has acted unlawfully.

15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 556, 570).

16 A complaint must contain a "short and plain statement of the claim showing that
17 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Specific facts are not
18 necessary; the statement need only give the defendant fair notice of what the ... claim is
19 and the grounds upon which it rests." *Erickson v. Pardus, et al.*, 551 U.S. 89, 93 (2007)
20 (internal citations omitted). However, the pleading must be more than an "unadorned,
21 the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

22 While the Court must accept all the allegations contained in the complaint as
23 true, the Court does not accept as true a "legal conclusion couched as a factual
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1 allegation.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by
2 mere conclusory statements, do not suffice.” *Id.*; *Jones v. Community Development*
3 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

4 A *pro se* plaintiff’s complaint is to be construed liberally, but like any other
5 complaint it must nevertheless contain factual assertions sufficient to support a facially
6 plausible claim for relief. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570. A
7 claim for relief is facially plausible when “the plaintiff pleads factual content that allows
8 the court to draw the reasonable inference that the defendant is liable for the
9 misconduct alleged.” *Id.* “A district court abuses its discretion by denying leave to
10 amend unless amendment would be futile or the plaintiff has failed to cure the
11 complaint’s deficiencies despite repeated opportunities.” *AE ex rel. Hernandez v.*
12 *County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012).

13 A. Exhaustion of Administrative Remedies

14 A federal district court’s review of claims arising under Titles II and XVI of
15 the Social Security Act is limited and may only occur after a “final decision” has been
16 rendered by the Commissioner after a hearing before an ALJ. See 42 U.S.C. §
17 405(g); *Subia v. Commissioner of Social Security*, 264 F.3d 899, 902 (9th Cir.2001).

18 A claimant obtains the Commissioner’s “final decision” qualifying for judicial
19 review only after completing the four steps of the administrative review process: (1)
20 initial determination; (2) reconsideration determination; (3) hearing before an
21 administrative law judge (ALJ); and (4) Appeals Council review. See 20 C.F.R. §§
22 404.900(a), 416.1400(a). After the Appeals Council rules on a claimant’s request for
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1 review, the claimant may request judicial review in a federal district court. 20 C.F.R. §§
2 404.981, 416.1481.

3 A claimant's failure to exhaust administrative remedies – that are required by
4 the Social Security Act and the applicable regulations – deprives the district court of
5 subject matter jurisdiction. *Bass v. Social Security Administration*, 872 F.2d 832, 833 (9th
6 Cir.1989). The district court may waive a plaintiff's failure to exhaust administrative
7 remedies and grant judicial review if the plaintiff asserts a colorable constitutional claim.
8 *Subia*, 264 F.3d at 902.

9 Here defendant contends that plaintiff has failed to state a claim upon which relief
10 may be granted because plaintiff has not exhausted the administrative process. Dk. 9 at
11 5. Defendant has submitted a declaration from Albert Saenz, a Management Analyst for
12 SSA's Center for Disability & Program Support. See Dkt. 10. Mr. Saenz attests that
13 plaintiff has requested a hearing before an ALJ but a hearing has not yet been
14 scheduled. *Id.* at 2, 27.

15 Further, plaintiff has not furnished any evidence demonstrating the administrative
16 review process is complete. Because there is no final decision for the Court to review,
17 the Court does not have jurisdiction over plaintiff's claim. See *Bass v. Social Security*
18 *Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (“A claimant's failure to exhaust the
19 procedures set forth in the Social Security Act, 42 U.S.C. § 405(g), deprives the district
20 court of jurisdiction.”).

21 There is an exception to this rule if a claim is “(1) collateral to the substantive
22 claim of entitlement (collaterality), (2) colorable in its showing that denial of relief will
23 cause irreparable harm (irreparability), and (3) one whose resolution would not serve
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1 the purposes of exhaustion (futility).” *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir.
2 2003) (quotation omitted).

3 Here, plaintiff has not raised a claim that is collateral to the substantive claim of
4 entitlement because his claim is “bound up with the merits so closely that the court’s
5 decision would constitute interference with agency processes.” *Johnson v. Shalala*, 2
6 F.3d 9018, 922 (9th Cir. 1993) (quoting *Johnson v. Sullivan*, 922 F.2d 346, 353 (7th Cir.
7 1990) (cleaned up). Plaintiff asks the Court to require the SSA to consider evidence he
8 allegedly submitted to the agency and provide a more detailed explanation why his
9 claim was denied. Dkt. 5 at 4. Defendant states that plaintiff may present this evidence
10 to the ALJ who will provide a more detailed explanation after the hearing. Dkt. 9 at 4-5.
11 Additionally, defendant points to the agency’s procedure that will allow plaintiff the
12 opportunity to review the information in his file. Dkt. 14 at 2 (citing Hearings, Appeals,
13 and Litigation Law Manual (Hallex) I-2-1-35, available at
14 https://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-35.html).

15 Plaintiff’s request is for review on the merits; this case is not a collateral
16 challenge to a policy of the SSA. See *Kildare*, 325 F.3d at 1083 (class action plaintiffs’
17 claims were not collateral when they consisted of “a series of claimed irregularities in
18 individual cases that is entirely dependent on the Appellants’ underlying claims for
19 benefits and the proceedings before the State Defendants in making the initial disability
20 determination”); see also *Hironymous v. Bowen*, 800 F.2d 888, 894 (9th Cir. 1986)
21 (claim seeking to overturn finding that plaintiff was ineligible for benefits based on
22 adjusted findings was “inextricably intertwined” with claim for benefits regardless that
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1 granting the writ would not immediately result in award of benefits). Therefore, plaintiff
2 has not alleged a collateral claim.

3 Plaintiff also fails to raise a colorable constitutional claim. Plaintiff posits: “what is
4 to prevent Social Security from denying the receipt of my 43 bank statements and three
5 years of Amazon.com purchases by me submitting all these documents again?” Dkt. 12
6 at 5. Even if the Court considers this to be a constitutional claim, it is not colorable. A
7 constitutional claim is colorable if it is not “wholly insubstantial, immaterial, or frivolous”
8 and is based upon “facts sufficient to state a violation of substantive or procedural due
9 process.” *Klemm v. Astrue*, 543 F.3d 1139, 1144 (9th Cir. 2008) (quotations omitted).
10 Plaintiff has not presented any evidence that he has been denied a hearing. Because
11 plaintiff can present and review his evidence through the administrative process at a
12 hearing conducted by an ALJ – and may also request review of the ALJ’s decision by
13 the Appeals Council, he has not presented facts sufficient to state a violation of
14 substantive or procedural due process.

15 For the same reasons, plaintiff has not shown that further administrative
16 proceedings would be futile. *Bass*, 872 F.2d at 833.

17 Therefore, under these circumstances 42 U.S.C. § 405(g) does not confer
18 jurisdiction to this Court.

19 B. Writ of Mandamus

20 Under 28 U.S.C. § 1361, federal district courts “shall have original jurisdiction of
21 any action in the nature of mandamus to compel an officer or employee of the United
22 States or any agency thereof to perform a duty owed to the plaintiff.” Mandamus
23 jurisdiction is available only if “(1) the individual’s claim is clear and certain; (2) the
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1 official's duty is nondiscretionary, ministerial, and so plainly prescribed as to be free
2 from doubt, and (3) no other adequate remedy is available.” *Kildare*, 325 F.3d 1078,
3 1084 (quotation omitted). However, mandamus jurisdiction is not available unless the
4 review process under 42 U.S.C. § 405(g) has been exhausted. *Hironymous*, 800 F.2d at
5 893.

6 As discussed above, plaintiff’s claim has not been exhausted because he has
7 not had a hearing before an ALJ and he has not sought review by the Appeals Council.
8 Therefore, mandamus jurisdiction is not available.

9 CONCLUSION

10 For the foregoing reasons, the Commissioner’s motion is GRANTED, plaintiff has
11 failed to state a claim upon which relief can be granted. Additionally, because plaintiff
12 has not exhausted his administrative remedies, leave to amend would be futile.
13 Accordingly, plaintiff’s claims are dismissed without prejudice.

14 Dated this 28th day of June, 2024.

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16 Theresa L. Fricke
17 United States Magistrate Judge
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